

Appeal from a decision of the Idaho State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease I-19469.

Affirmed.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

Where a tender of payment of the rental for an oil and gas lease more than 5 months before the anniversary date was promptly returned to the lessee with an explanation that it was a duplicate payment for the present lease year and a reminder of the next anniversary date by which rent is due, a decision holding the lease to have terminated by operation of law and denying a petition for reinstatement under 30 U.S.C. § 188(c) (1982) (class I) will be affirmed if the rental payment is not received thereafter until more than 20 days after the anniversary date.

APPEARANCES: Sue A. Hartman, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Sue A. Hartman has appealed from a September 23, 1985, decision of the Idaho State Office, Bureau of Land Management (BLM), denying appellant's petition for reinstatement of oil and gas lease I-19469.

On July 9, 1985, BLM issued a notice of lease termination advising appellant that her lease had terminated for failure to pay the annual rental on or before the lease anniversary date of June 1, 1985. The notice further explained to appellant her right to petition for reinstatement of the lease pursuant to the provisions of 30 U.S.C. § 188(c) (1982) (class I reinstatement) or 30 U.S.C. §§ 188(d) and (e) (1982) (class II reinstatement). The requirements for a class I reinstatement were set forth as follows:

I. Class I (30 U.S.C. 188(c); 43 CFR 3108.2-1(c) [1]; Public Law 91-245)

Your lease may be reinstated under these provisions only if: (1) the rental due was paid or tendered within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence, (2) that a petition for reinstatement, together with a nonrefundable filing fee of \$ 25.00 and the required rental, is filed in this office within 60 days after receipt of this Notice, and (3) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease. If these conditions are met, your lease will be reinstated with the original lease terms and conditions, effective on the date of termination. If one or more of the above conditions are not met, your lease may be eligible for a Class II reinstatement.

The notice of termination further advised appellant of her option to petition for reinstatement at a higher rental and royalty rate pursuant to the provisions of section 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. §§ 188(d) and (e) (1982). See 43 CFR 3108.2-3. Reinstatements under this latter authority are referred to by regulation as class II reinstatements.

Subsequently, on July 22, 1985, BLM received appellant's petition for class I reinstatement of lease I-19469. The petition was denied by BLM on the grounds that payment of the annual rental for the lease was due on or before the anniversary date of June 1, 1985; reinstatement under class I requires that payment be received within 20 days of the anniversary date; and payment was not received until July 22, 1985, when the petition for reinstatement was filed.

In her statement of reasons for appeal, appellant asserts that she attempted to pay the rent for this lease early, but the "remittance was returned" to her. Appellant has attached to her statement of reasons a document which she claims "verifies my attempt to pay this rental early." This document, titled "Notice of Return of Remittance," was mailed to appellant by BLM on December 18, 1984. Superimposed on the photocopy of the notice is a photocopy of a check dated December 15, 1984, in the amount of \$ 640 (the annual rental for the lease) written by appellant and made payable to BLM. The notice explained why the check was being returned to appellant: "This is a duplicate payment. According to our records the amount was originally paid on 04/04/84 by Sue A. Hartman. Therefore your remittance is returned herewith." The notice also advised appellant that the anniversary date for payment of rental on her lease was June 1, 1985. 2/

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1/ The current version of this regulation is codified at 43 CFR 3108.2-2.

2/ In her petition for reinstatement, appellant stated: "In late April I sent a check to Minerals Management Service to be sure that my payment would not be late. I received my check and a note stating everything was paid." BLM responded to this assertion in a July 25, 1985, letter:

Upon the failure of the lessee to pay the annual rental on or before the anniversary date of any lease on which there is no well capable of producing oil or gas in paying quantities, the lease terminates automatically by operation of law. 30 U.S.C. § 188(b) (1982); 43 CFR 3108.2-1. Where the lease rental was paid or tendered within 20 days of the anniversary date and it is shown to the satisfaction of the Secretary of the Interior that the failure to pay by the anniversary date was either justifiable or not due to a lack of reasonable diligence, then the lease may be reinstated. 30 U.S.C. § 188(c) (1982); 43 CFR 3108.2-2 (class I reinstatement). Regardless of the diligence exercised by the lessee or the justification for a late payment, it is clear that receipt of payment of the annual rental within 20 days of the lease anniversary date is a statutory prerequisite to a class I reinstatement under the terms of 30 U.S.C. § 188(c) (1982). Shell Oil Co., 57 IBLA 63 (1981); see 43 CFR 3108.2-2. Thus, if the petition for reinstatement is considered in light of the July 22, 1985, rental payment (more than 20 days after the June 1, 1985, anniversary date), the BLM decision must be affirmed.

The factor which distinguishes this case from the routine oil and gas lease reinstatement appeal is the lease rental payment tendered by appellant in December 1984. Hence, the issue raised by this appeal is whether reinstatement of the lease is properly denied (or the lease was properly held to have terminated) in view of the December 1984 tender of payment by appellant.

Appellant's check was accompanied by a cover letter dated December 15, 1984, which stated in part:

I am the holder of oil and gas lease No. I-19469. I believe there should be a \$ 640 annual rental fee due this year, but where and when I am to pay this rental fee is unclear.

Communication was received from the Minerals Management Service concerning the transfer from BLM to MMS the responsibility for issuing courtesy notices and collecting annual rentals. No notice of rental fee was ever sent to me and I am unable to determine if I should send the 1984 fee to MMS or BLM.

Because the original information for this lease came from the Bureau of Land Management, I am sending the BLM office the \$ 640 rental fee. Please credit my account for this rental

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fn. 2 (continued)

"You claim you sent a check to MMS in late April to cover rental for [lease I-19469] but that MMS returned your check to you with a note stating 'everything was paid.' We have contacted MMS about this matter, however, they have no record of such action. \* \* \* In order that we may take corrective action, please furnish us a copy of MMS's note and a copy of the check which was returned to you from MMS."

There is no indication in the record that appellant furnished any additional information except that which was contained in the statement of reasons for appeal.

payment and send me instructions for paying the rental fee in the future.

In response to the payment enclosed with the cover letter, BLM returned the check with an explanation of the reasons for doing so noted previously.

[1] The Department has held that where the rental payment for an oil and gas lease was received in the proper office prior to the lease anniversary date and the check was erroneously returned to the lessee, a decision holding the lease to have terminated by operation of law for nonpayment of rental will be reversed. H. E. Stuckenhoff, 67 I.D. 285 (1960). However, it should be noted the return of the rental checks in Stuckenhoff was immediately protested by the lessees. This Board has also held that a lease should be reinstated where the rental payment was received 14 days before the lease anniversary date, although by the wrong BLM office, and the negligent failure of BLM employees to either promptly forward the payment to the proper office or return it to the lessee was a causative factor in the late payment. Richard L. Rosenthal, 45 IBLA 146 (1980).

On the facts of the present case, we can find no error in the action of BLM in returning the check tendered in December 1984. Appellant in her cover letter indicated the payment was tendered for the 1984 annual rental. BLM responded promptly by notice indicating the tendered check was a duplicate payment since rental had been paid on April 4, 1984. Further, the BLM notice reminded appellant the next "anniversary date for payment is 6/01/85." Even assuming, arguendo, BLM erred in returning the check, this Board has previously held regarding refunds of lease rental payments that it is the duty of the lessee to promptly inquire regarding the reason for the refund or to suffer the consequences of the error which prompted the repayment. Sarkeys, Inc., 1 IBLA 123, 77 I.D. 207 (1970) (distinguishing H. E. Stuckenhoff, supra). Under the circumstances of this case, we conclude BLM properly held lease I-19469 to have terminated by operation of law for failure to pay the rental by the anniversary date. Further, since payment of the rental was not filed with BLM until more than 20 days after the anniversary date, the decision denying the petition for reinstatement must be affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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C. Randall Grant, Jr.  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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R. W. Mullen  
Administrative Judge

